

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
and THE STATE OF ILLINOIS,)	
<i>ex rel.</i> KWAME RAOUL, Attorney General,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 21-cv-5424
)	
BUCKEYE PIPE LINE COMPANY, L.P.)	
and WEST SHORE PIPE LINE COMPANY,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), the United States Army Corps of Engineers (“Corps”) and the Secretary of the United States Department of the Interior (“DOI”) on behalf of the United States Fish & Wildlife Service (“FWS”), and the State of Illinois (the “State”), *ex rel.* Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“IEPA”) and the Illinois Department of Natural Resources (“IDNR”), file this Complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for penalties and injunctive relief under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.* and for damages for injury to, destruction of, loss of, or loss of use of, natural resources, and the unreimbursed costs of assessment thereof under the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701 *et seq.* against Buckeye Pipe Line Company, L.P.

(“Buckeye”) and West Shore Pipe Line Company (“West Shore”) (collectively “Defendants”) with respect to the discharges of crude oil and the violations of a permit issued pursuant to CWA Section 404(a) that occurred beginning on or about December 13, 2010, near Lockport, Will County, Illinois.

2. This action is commenced under CWA Section 311(b)(7), 33 U.S.C. § 1321(b)(7), to obtain civil penalties against Defendants for discharging oil in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and under CWA Section 404(s), 33 U.S.C. § 1344(s), to obtain injunctive relief and penalties for violating a condition or limitation set forth in a permit issued by the Corps pursuant to CWA Section 404(a), 33 U.S.C. § 1344(a).

3. In this action, the United States seeks to require Defendants, at their own expense and at the direction of the EPA and the Corps, to restore and/or mitigate the damages caused by their unlawful activities, and to pay civil penalties, as provided in 33 U.S.C. §§ 1321(b) and 1344(s).

4. The United States also commences this action on behalf of the Department of the Interior, a federal agency that has been designated by the President to act on behalf of the public with respect to a variety of natural resources and their supporting ecosystems belonging to, managed by, appertaining to, or otherwise controlled by the United States (“Federal Trustee”). Exec. Order No. 12580 as amended by Exec. Order 12777; 40 C.F.R. § 300.600. The Secretary’s trusteeship includes, but is not limited to, the following natural resources and their supporting ecosystems: migratory birds; certain anadromous fish, endangered species and marine mammals; federally owned lands and minerals; and certain federally managed water resources. 40 C.F.R. § 300.600(b)(2).

5. The Secretary of the Interior has delegated to the Regional Director of the FWS, Region 3, the authority to act as the authorized official for all natural resources within the trusteeship of the Department of the Interior with respect to natural resource damage assessment activities related to the discharge of oil in or around Will County, Illinois.

6. The United States, through DOI and FWS, is a trustee for certain natural resources in and around Line 257 located near Lockport, Will County, Illinois.

7. The State of Illinois, *ex rel.*, Kwame Raoul, Attorney General of the State of Illinois, is a state of the United States, a body politic and a sovereign entity. Kwame Raoul is the duly elected, qualified and sworn Attorney General of the State of Illinois, having the powers and duties prescribed by the IL. CONST. art. V., § 15 (1970), and having all the powers and duties of the Attorney General at common law. The Attorney General possesses both the statutory and common law powers to bring this action on behalf of the State of Illinois, its governmental agencies, and its people.

8. The Illinois Department of Natural Resources is an agency of the State of Illinois and has been designated by the Governor as a co-trustee of the State of Illinois' natural resources.

9. The Illinois Environmental Protection Agency is an agency of the State of Illinois and has been designated by the Governor as a co-trustee of the State of Illinois' natural resources.

JURISDICTION, AUTHORITY AND VENUE

10. This Court has jurisdiction over the subject matter of the United States' claims in this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; CWA Sections 311(b)(7)(E), 311(n),

and 404(s), 33 U.S.C. §§ 1321(b)(7)(E), 1321(n), and 1344(s); and OPA Section 1017(b), 33 U.S.C. § 2717(b). The Court has personal jurisdiction over the Defendants.

11. Authority to bring this action is vested in the United States Department of Justice by CWA Section 506, 33 U.S.C. § 1366, and by 28 U.S.C. §§ 516 and 519.

12. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a) because the discharge of oil occurred in this judicial district and because Defendants conduct business in this judicial district. *See also* 33 U.S.C. § 1321(b)(7)(E). Venue is also proper in this district pursuant to CWA Section 404(s), 33 U.S.C. § 1344(s), because Defendants conduct business in this district. Venue is also proper in this district pursuant to 33 U.S.C. § 2717(b), because this is the judicial district in which the discharges of oil occurred.

13. Notice of commencement of this action has been given to the State of Illinois, pursuant to CWA Section 404(s)(3), 33 U.S.C. § 1344(s)(3).

DEFENDANTS

14. Defendant Buckeye is a limited partnership organized under the laws of the State of Delaware and conducts business in Illinois with its headquarters in Emmaus, Pennsylvania.

15. Defendant West Shore is a corporation organized under the laws of the State of Delaware with its headquarters in Lemont, Illinois.

STATUTORY AND REGULATORY BACKGROUND – CLEAN WATER ACT

16. CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

17. Pursuant to CWA Section 311(b)(4), 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that discharges of oil in such quantities as may be harmful to the public health or welfare or environment of the United States include discharges of oil that “(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3.

18. Pursuant to CWA Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A), “[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty”

19. CWA Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A), as modified by the Civil Monetary Penalty Inflation Adjustment Rules of 2008 and 2013, 73 Fed. Reg. 75,340 (Dec. 11, 2008) and 78 Fed. Reg. 66,643 (Nov. 6, 2013), and 40 C.F.R. § 19.4, provides that any person who is the owner, operator, or person in charge of an onshore facility from which oil is discharged in violation of CWA Section 311(b)(3), shall be subject to a civil penalty of up to \$1,100 per barrel discharged for discharges occurring between January 13, 2009 and December 6, 2013.

20. CWA Section 404(a), 33 U.S.C. 1344(a), authorizes the Secretary of the Army, acting through the Corps, to issue permits for the discharge of dredged or fill material into navigable waters (“CWA Section 404 permit”).

21. Regulations codified at 33 C.F.R. § 323.2(c) define “dredged material” as “material that is excavated or dredged from waters of the United States.” The term “discharge of dredged material” means “any addition of dredge material into, including redeposit of dredged

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